

BEFORE THE
Communications Commission
WASHINGTON, D.C. 20554

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MB Docket No. 06-189

To: The Commission

COMMENTS OF CLARITY MEDIA SYSTEMS, LLC

Clarity Media Systems, LLC (“Clarity”), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415 and 1.419, hereby submits its comments in response to the Commission’s October 20, 2006 Notice of Inquiry concerning market competition in the multichannel video programming distribution (“MVPD”) marketplace.¹ In these Comments, Clarity is pleased to inform the Commission about an innovative, new MVPD service that helps to fulfill the Commission’s objectives. Clarity currently has applications pending before the Commission to begin distributing television programming via a new, short-range, ultra low-power, digital MVPD system that will bring a full range of television programming directly into the cabs of long-haul trucks and recreational vehicles that are parked on more than 250 travel plazas located along the nation’s interstate highways. Clarity’s MVPD offering will provide a first service to a community of approximately 2.5 million unserved and underserved Americans. Clarity’s travel-

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*. Notice of Inquiry, MB Docket No. 06-189 (rel. Oct. 20, 2006) (“*NOI*”).

plaza-based service offering will fill a longstanding and currently unfilled niche in the MVPD market, and thus directly advances the Commission's objectives of fostering increased competition and the removal of barriers to entry to the MVPD market.

Video Programming for an Unserved Population

Flying J Inc. ("Flying J"), Clarity's parent company, has dedicated itself to serving professional long-haul truck drivers and the transportation community.

Flying J owns and operates state-of-the-art full service travel plazas in 41 states and averages 140,000 customers per month, per plaza. Most of the Flying J travel plazas are located along the interstate highways well outside major population areas. Flying J travel plazas are heavily utilized layover destinations for professional long-haul truck drivers and recreational vehicle ("RV") operators. Currently, Flying J, through a subsidiary, provides state-of-the-art personal and business communication services, including high-speed wireless fidelity ("Wi-Fi") Internet access at all its travel plazas and over 110 other industry locations. Additionally, Flying J's subsidiary offers its patrons long distance telephone service, document scanning and faxing services, remote imaging services, load/equipment posting, freight matching, and advertising services.

Flying J formed Clarity to add to the suite of quality-of-life highway communications services they offer by providing new multichannel digital television service to a large unserved community that visit its travel plazas. Unbeknownst to most Americans, a community of over 2.5 million people exists who lack regular and dependable television service. That community includes the 1.6 million Class 8, full-

load, over-the-road professional long-haul truck drivers who are vital to the nation's commerce and safety. These drivers comprise the largest component of the community of mobile Americans who make the highways their workplace and their home away from home. In addition, nearly one million Americans traverse the nation's interstate highways in recreational vehicles ("RVs") in which they live.

The lives of professional long-haul truck drivers are unique, gripping, and not very widely known and understood. The professional driver spends approximately 10 hours a day for 22 contiguous days every month moving the nation's essential commodities tens of thousands of miles across the country's highways. During this time, the driver breathes, lives, and sleeps in the cab of his or her vehicle. For professional drivers, the cabs of their trucks become their mobile motels, their homes on the road. To ensure that the drivers are rested and alert as they maneuver these potentially deadly vehicles at high speeds along the public roadways, the United States Department of Transportation ("DOT") requires that they spend a limited number of hours driving and substantial consecutive hours at rest. DOT Hours of Service regulations currently limit drivers to no more than 11 hours of driving following 10 consecutive hours at rest, and to no more than 70 hours of driving in any period of 8 consecutive days. Drivers' rest periods are typically spent at travel plazas along the nation's highway system. While at the travel plazas, in addition to fueling their vehicles, the drivers normally use the shower and other facilities made available and then remain for hours on end in the cabs of their trucks where they rest and sleep. During their long hours, days, and weeks in their cabs, which typically contain most

other comforts of a motel room, the drivers have no regular and dependable access to television programming service.²

In addition to professional long-haul truck drivers, the country's mobile population includes approximately one million citizens who traverse the highways in recreational vehicles ("RVs"). These citizens also frequent the nationwide network of rural and suburban roadside rest plazas during their travels. Like the truck drivers, they too have no regular access to television programming service in the vehicles that serve as their temporary residences. The combined Class 8 professional long-haul truck drivers and the rural and suburban RV users represent a community of over 2.5 million Americans who currently have no regular accessible television service in the vehicles where they reside.³

Clarity's Proposed New Service

Through its proposed system, Clarity will offer a multichannel digital television service at over 250 highway locations through a new, ultra low power, short-range transmission facility that Clarity has developed specifically to serve vehicles parked at travel plazas. In stark contrast with most television distribution facilities, the goal of Clarity's system is *not* to maximize signal coverage. Instead, Clarity has designed its

² Statistics show that truck stops, rest areas, and parking lots are the primary location for rest of 76% of truck owner operators. Less than 6% will stay in a motel or hotel while resting. 2000 Overdrive Magazine, Spring 2000, p. 56.

³ On rare occasion, an isolated driver might make the laborious effort to install a satellite receiver on a vehicle to obtain reception in certain areas, and a wired service exists at approximately 20 rest stops across the country. The reality is that these satellite receiving systems are expensive (on the order of several hundreds to several thousands of dollars), and the service itself is also expensive. These factors put such systems out of the reach of most professional drivers and RV operators. Thus, the overwhelming predominance of the highway community has no viable television service at all.

system to provide service to the limited area surrounding the transmitter site itself – where the long-haul trucks and RVs park while at the travel plaza. The travel plazas that Clarity’s facility will serve typically have space for approximately 200 long-haul trucks at one time. The coverage area of the signal Clarity will transmit at each site is thus extremely compact, with received signal levels designed to serve subscribers with small aperture receive antennas on their trucks or RVs at path distances to about 900 feet, beyond which the signal diminishes to negligible levels. The transmitting antenna itself will be no more than 15 meters above ground, and will employ substantial electronic beam downtilt to restrict signal propagation beyond the fence line.

Through a single, optimally-situated transmitter, Clarity will provide each travel plaza with up to 70 channels of digital television programming in the 2025-2109 MHz band. Significantly, Clarity proposes that its transmitters will operate on a strictly non-harmful interference/non-protected basis with respect to all other licensed users of the band in which the transmitters operate. This will expedite processing and reduce any anxiety as to the ability of present or future licensees of spectrum in the band to operate. Indeed, through a series of operational tests Clarity conducted in September and October 2005 at three Flying J travel plazas, with the cooperation and active participation of broadcast licensees with auxiliary facilities in the 2025-2109 MHz band,⁴ Clarity is now able to state unequivocally that its system can achieve

⁴ The tests were conducted pursuant to a Commission Experimental Radio Service license (File No. 0046-EX-PL-2005). Clarity filed a comprehensive report describing the testing process and results into the record of this license in December 2005.

Clarity's modest service objectives without causing harmful interference to authorized users (present or future). The proposed system is a model of spectrum efficiency and ingenuity for this era of increasing and conflicting spectrum demands and congestion.

Clarity's low-power, short-range multichannel television distribution system will be deployed at more than 250 locations spread along the nation's interstate highways. Each transmitter site will be individually applied for and licensed. Following informal guidance provided by the Commission's Media Bureau and Office of Engineering and Technology over the last 18 months, Clarity submitted a first tranche of 10 applications for transmitter facilities at plaza locations in all regions of the country earlier this year.⁵ These applications included the requests for waivers of several rules that would permit Clarity's system to operate on a secondary, non-interfering/non-protected basis within the CARS service under Part 78 of the Commission's Rules. The waiver requests were placed on public notice in August 2006.⁶ The comment cycle on those requests was completed in October, and the applications are ripe for action. Clarity is preparing the remaining 249 applications,

⁵ In 2005, Clarity filed three applications for CARS licenses to operate the transmitters for its low-power, short-range, multichannel television distribution system from locations in Frazier Park, CA, Ogden, UT, and North Salt Lake, UT. On September 14, 2005, the Commission dismissed the applications without prejudice, pending the receipt of results of tests of the system Clarity was authorized to perform under an Experimental Radio Service license (File No. 0046-EX-PL-2005) the Commission granted in July 2005. *See* Letter dated September 14, 2005, from Wayne T. McKee, Assistant Chief, Engineering Division, Media Bureau, to Ian Williams of Clarity Broadcasting Systems, LLC. As noted above, the experimental testing of the proposed Clarity transmission system was very successfully completed in the Fall of 2005, and the results of the testing have been compiled into a report that Clarity filed with the Commission in December 2005. On February 21, 2006, Clarity filed applications on FCC Form 327 to operate transmitters in the CARS service at the following locations: Frazier Park, CA; North Salt Lake, UT; Ogden, UT; Rapid City, SD; Blacksburg, SC; Waco, TX; Carmel Church, VA; Fairview, TN; Graham, NC; and St. Lucie, FL. All ten applications are currently pending.

⁶ *See Waiver Requests by Clarity Media Systems, LLC to Operate CARS Stations at Flying J Travel Plazas*, DA 06-1664 (rel. Aug. 23, 2006).

which it intends to file in the very near future, and will commence to roll out service as soon as it receives the requisite authorizations.

Details of Clarity's Programming Offerings

Clarity will provide up to 70 channels of quality television programming for millions of professional long-haul truck drivers and other users to access at over 250 locations across the nation's highway system. This programming will include all major entertainment networks, news networks, weather, sports channels, children's programming, health programming, outdoors programming, music channels, and movie networks. Clarity already has entered into contractual agreements authorizing it to distribute this programming at the highway plazas it will serve. Distribution of the programming can commence immediately upon receipt of Commission authorization and the installation of facilities.

A significant component of Clarity's program service will be the availability of community access channels uniquely serving the professional long-haul truck drivers and RV users in the rural and suburban driving community. Clarity's program plan contemplates developing up to five channels for origination and community access programming,⁷ as follows:

Origination/Community Access Channel 1:

Driver Access Channel

This channel will allow drivers to provide and develop "community" programming that features driver-centric lifestyle forums. Charlie Chat on the Dish

⁷ Clarity plans to reserve seven percent of its channel capacity (five out of seventy) for educational and informational programming, which is higher than DBS operators' public interest obligation requiring them to reserve four percent. 47 C.F. R. § 25.701(f).

Network is a good example of using "access" to an interested and specific audience for the purposes of communication, information, and education. Professional drivers will be encouraged to submit and suggest content for airing.

Origination/Community Access Channel 2: The Clarity Channel

This channel will provide content that is of particular interest to the professional long haul driver, both with regard to day-to-day driving and as a career. Clarity will provide content such as transportation-focused news, weather, and traffic reports. Programs will also include specialty programs such as information on the latest trucks, equipment, and facilities; discussions of long-term career and economic planning strategies for professional drivers; regular updates on legislation and regulations that affect the professional driver; and industry-centric talk shows.

Origination/Community Access Channel 3: The Education Channel

This channel will provide continuing education from technical colleges and other such program providers. Clarity will make the channel available to technical colleges and off-campus university programs, such as those offered by the University of Phoenix. The driving audience can benefit from access to this type of continuing education exposure as the majority of professional long-haul truck drivers do not have a four-year college degree.

Origination/Community Access Channel 4: Safety, Security and Alert Channel

Clarity will make this channel available to federal, state and local agencies for the continuous national posting of missing or wanted individuals and dissemination of significant public security and highway emergency information. There are thousands

of missing children and adults and this channel would allow agencies and individuals to present missing persons to an audience that has been vigilant in seeking, finding, and reporting the location of those who are missing. One example of how this channel can be used is in connection with the very successful “AMBER Alert” programs that have been instituted in every state in the country (and on a national basis), and have been instrumental in the recovery of nearly 200 missing children nationwide since their inception just a few years ago.

Origination/Community Access Channel 5:

The Industry Channel

Clarity will make this channel available to the several industry associations, including the American Trucking Associations, which serve the long-haul trucking sector. These associations address most aspects of matters affecting the industry, including maintenance, legislation, public relations, and safety. Clarity anticipates that informative programming from these associations will be well received and will benefit the driving population immensely.

A tremendous need exists for continued access by and to this community of drivers, and Clarity will commence the development of these channels at the earliest possible time following receipt of Commission authorizations and installation of facilities.

Public Interest Benefits from Clarity’s Proposed Service

Clarity’s proposed entry into the MVPD market will achieve multiple public interest benefits. First, Clarity’s service will make video programming available to approximately 2.5 million Americans who currently lack access and who

overwhelmingly desire to gain access through Clarity's proposed system. Second, Clarity's service will take advantage of new technologies to provide video programming in an extremely efficient and affordable manner directly and virtually exclusively to its target audiences. Third, Clarity's programming will provide broader exposure to important safety and emergency information through access to local television stations in the markets where the drivers are parked and through its Safety, Security, and Alert channel. Moreover, the Safety, Security, and Alert channel will undoubtedly assist in saving children's lives in abduction and exploitation crimes, locating missing persons, and capturing and punishing criminals. Fourth, Clarity's service will serve the Commission's policy to promote localism. Clarity's provision of programming oriented directly toward a defined community that has no service at all, to meet the distinctly defined needs of that community, effectively serves the Commission's goals for local interest programming in a unique and large way. Fifth, Clarity's service will enhance educational opportunities to a large population. Clarity's proposed Education Channel will provide access to daily curricula programming of technical colleges and off-campus university programs to afford the large population of long-haul truck drivers and RV users opportunities to improve their skills, education, and career prospects. Lastly, Clarity's service will fulfill the Commission's policy to encourage private capital investment to provide new service offerings to public, particularly in rural areas.⁸ Clarity plans to complete its multi-million dollar investment to bring its new technology and television programming to

⁸ *Facilitating the Provision of Spectrum Based Services to Rural Areas*, 19 FCC Rcd. 19078 (2004) (¶2).

highway vehicle parking plazas, 106 of which are located in counties that are within the Commission's definition of rural, i.e. population density of 100 persons per square mile or less.

Positive Effect on Multiple Dwelling Unit (MDU) Market

Clarity's proposed service would also be a new entrant to the segment of the MVPD marketplace that serves multiple dwelling units (MDUs). The Commission separates MDUs from the rest of the MVPD market because of the difficulty in providing them with competitive video programming.⁹ A travel plaza at which hundreds of drivers reside per day essentially is a MDU on the highway, a sort of apartment house with portable rooms, whose residents have the same need for efficiently-delivered multichannel television service as do residents of MDUs located in structures. Specifically, each travel plaza will maintain one, central transmitter that will send the video programming wirelessly to multiple trucks or RVs parked in the plaza. Each truck or RV is a dwelling unit where its drivers live, sleep, and have a need and right to have access to current television news, information, and entertainment programming. Clarity's service would provide television programming to these drivers at travel plazas that currently do not receive any television programming on an MDU basis.¹⁰

Conclusion

⁹ *NOI* at ¶ 24.

¹⁰ The travel plazas that Clarity will serve are constructed of steel reinforced concrete or asphalt having the strength to hold 200 long-haul trucks – each weighing 80,000 pounds. The expense of digging, installing, and maintaining a cable or wired television distribution service under this infrastructure is prohibitive and makes the statutory mandate to provide service at reasonable charges that users can afford impossible to achieve.

In short, Clarity is pleased to inform the Commission about its proposed new MVPD service offering that will make commercial and public interest television programming available for the first time to a large population of Americans who currently lack access.

Respectfully submitted,

CLARITY MEDIA SYSTEMS, LLC

By: Stephen D. Baruch

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Howard A. Topel
Stephen D. Baruch

Leventhal Senter & Lerman PLLC
2000 K Street, NW – Suite 600
Washington, D.C. 20006
(202) 429-8970

November 29, 2006

Its Attorneys